

Terms of sale, delivery and payment of Wilhelm Schwenker GmbH & Co. KG

I. General information

All deliveries and services shall be carried out based on the following terms and conditions. Contrary terms and conditions, deviations and oral collateral agreements are only binding for us if we have explicitly confirmed these in writing or insofar as they comply with mandatory law.

Should individual provisions of these Terms of sale, delivery and payment be invalid, this shall have no effect on the validity of the other provisions. Possible invalid provisions are to be replaced by the contractual partners within the scope of that which is deemed reasonable in good faith by those regulations, which best take the commercial purpose of the contract into account without the contents of the contract being substantially changed hereby. The same shall apply if there is a lack of an explicit regulation of facts that require regulation.

II. Offer, scope of services and conclusion of contract

Our offers are without obligation with regard to the price, delivery date and other contents. The sending of our price lists, catalogs, brochures and similar documents shall not obligate us to the delivery. Orders are only binding for us if they have been confirmed by us in writing. If such a confirmation is not given by us the issued invoice shall be deemed as an order confirmation.

All performance features stated in our offers as well as the details in the documents belonging to an offer such as brochures, diagrams or drawings are merely to be considered to be approximate-Insignificant and/or customary trade deviation, which do not impair the usability and are deemed reasonable for the buyer, shall remain reserved. We do not assume any liability for oral goods descriptions of our employees.

We reserve the property right and copyright to our documents – also on electronic data carriers. Without our consent they may not be made accessible to third parties.

III. Delivery

The agreement of a binding delivery deadline can only be carried out in writing. Delivery deadlines will begin with the conclusion of a contract, unless another time is agreed in the contract.

The delivery deadline will be extended by a reasonable extent, if we are affected by measures within the scope of industrial disputes, in particular strike and lock-out, as well as with the occurrence of unforeseeable events, which are beyond our control, e.g. interference to transport and operation, material or energy shortage, delay in delivery of a sub-supplier, etc. The same shall apply if the buyer, on his part, delays or fails to carry out necessary or agreed acts of assistance.

Changes to the goods to be delivered as initiated by the buyer shall also lead to a reasonable extension to the delivery deadline.

If the aforementioned reasons, beyond our control, lead to a delay in the service of more than four months, we can rescind the contract. Other rights of rescission shall remain unaffected.

IV. Prices and packaging

The prices valid on the day of the order shall apply. The prices valid on the day of the delivery shall only apply in the event of a long-term procurement contract or a permanent obligation.

Our prices are without obligation and are deemed, if not stated otherwise, in Euro without value added tax, which will be disclosed separately in the invoice in the statutory amount on the day of the invoicing. Insofar as not otherwise derived from the order confirmation, the prices will be deemed ex warehouse Minden. Freight, packaging, assembly, insurance, customs duties and other expenses as well as costs for the documents that are necessary for the import into the country of destination will be invoiced separately. The packaging will be charged at the self-cost price. The take-back of the packaging materials is oriented to the statutory regulations. With the individual orders, whose net value falls short of Euro 25, we reserve the right to charge a shortfall in quantity surcharge.

V. Shipment and passing of risk

The risk of the accidental loss and the accidental deterioration of the object shall pass to the buyer when it is handed over. For the event that the buyer is not a consumer, the risks shall pass to the buyer when the object is shipped, if the object is handed over to the person carrying out the transport or when the goods have left the seller's warehouse for the purpose of shipment.

Insofar as not otherwise agreed the type of shipment is at our discretion. We are not obligated to choose the most reasonably-priced shipment.

VI. Terms of payment

Payments have to be made within 30 days after maturity and receipt of an invoice. The deduction of cash discount shall require a special written agreement and presumes that the invoice amount exceeds Euro 25 net and the buyer has fulfilled all due payment obligations from previous deliveries. Such amounts are not capable of cash discount, which are compensated for by offsetting against credit notes. Repair and assembly invoices are payable immediately and without deduction.

In case of the culpable exceeding of the payment deadline we shall request interest on default in the amount of 5% above the respective applicable base lending rate according to Section 1 DÜG [Discount Rate Transition Law]. We shall offset incoming payments against the respective oldest due receivable. Check payments will only be deemed as effected after they have been credited. We only accept bills of exchange after prior agreement. The further issue and prolongation shall not be deemed as fulfilment. Bill of exchange costs and discount expenses as well as other fees shall be for the expense of the buyer.

If the buyer is in default with a significant part of the payment or in case of an objection against his checks or bills of exchange or if the prerequisites for the granting of a loan cease to exist, then all of our claims against him will be deemed due and payable immediately. This shall also apply to originally deferred invoices as well as bills of exchange or checks which are due at a later date.

If the asset situation of the buyer deteriorates substantially after the order so that the consideration is in jeopardy, we are entitled to refuse a not yet executed delivery or to request reasonable advance payments or provisions of collateral.

Payments to our field sales force employees or other persons appearing in our name shall only have a debt discharging effect if they are carried out against submission of a debt collection power of attorney issued by us and a numbered receipt form is used.

The buyer can only offset if the counter-claim of the buyer is undisputed or a final and binding enforceable instrument is available. He can only assert a right of retention insofar as it is based on claims from the same contractual relationship.

VII. Reservation of title

The object of purchase will remain our property until the compensation of the claim to which we are entitled. If the buyer is a merchant within the meaning of the HGB [German Commercial Code], we reserve the property to all objects of delivery until the compensation of all claims from the business relationship, also future and conditional claims. The buyer is entitled to resell the objects of delivery in the ordinary course of business. He hereby now already assigns us all claims in the amount of the end invoice amount of the purchase price claim owed by him (including value added tax), to which he is entitled from the resale against his buyers or third parties, irrespective whether the objects of delivery have been resold without or after processing. We hereby accept the assignment. The buyer shall also remain authorized to collect these claims after the assignment. Our authorization to collect the claims ourselves shall remain unaffected hereby. We undertake not to collect the claims ourselves as long as the buyer satisfies his payment obligations as per contract or no application has been filed for the opening of insolvency proceedings. If the latter circumstances have occurred, the buyer has to provide all details to us, at our request, which are necessary for the collection of the assigned claims and to hand over the associated documents as well as to inform the relevant debtors (third parties) of the assignment.

The buyer is not entitled to pledge or assign as collateral any goods that are subject to a reservation of title. Impacts of third parties on these goods, in particular attachments, are to be reported to us without delay. The authorization for the resale can be revoked by us, if the buyer does not properly fulfil his contractual obligation.

If the goods are processed or finished by the buyer, the reservation of title shall also cover the entire new object. The buyer will acquire co-ownership to the fraction part, which corresponds with the ratio of the value of his goods to that of the goods delivered by the seller. For the event that the value of the collateral to which we are entitled exceeds the claims to be secured by more than 20%, we are obligated to insofar release the collateral items to which he is entitled upon request. We are hereby responsible for the selection of the collateral items to be released.

VIII. Liability for material defects

The sale of used goods is carried out under the exclusion of all liability for material defects if the buyer does not concern a consumer. If the buyer is a consumer the statute-of-limitations for material defects with used objects is 1 year. With the sale of newly produced objects this statute-of-limitations is 1 year, if the buyer does not concern a consumer. If the buyer is a consumer statute-of-limitations of 2 years shall apply.

If the goods are faulty the buyer can primarily request subsequent fulfilment pursuant to Section 439 BGB. If the buyer is not a consumer, we can choose between the remedy of the defect or the delivery of a faultless object.

We shall be liable according to the statutory provisions for damages, if the buyer asserts claims, which are due to malicious deceit, willful intent or gross negligence on our part. If the claim for damages is due to a culpably omitted remedy of a defect, then this is limited with regard to installation and dismantling costs in terms of the amount to the corresponding rates of the DAT/Schwacke list. Incidentally, a claim for damages is excluded. We shall in particular not be liable for damages, which were not caused to the object of delivery, unless, it concerns injury to life, the body or the health, that is a result of a negligent breach of obligation committed by us or a willful or negligent breach of obligation of our legal representative or vicarious agents.

In the event that a defect is remedied we are obligated pursuant to Section 439 Para. 2 BGB to bear all expenses that are necessary for this purpose. If the buyer is not a consumer, this will only apply insofar as the costs do not increase by the fact that the object of purchase was taken to another location than the place of performance.

If the customer asserts claims for defects after an assembly of the goods carried out by him liability by us will only be taken into consideration if the assembly or the installation of the sold object was carried out by the buyer in a qualified manner. The qualified execution has to be presented and proven by the buyer. Claims for defects of the commercial orderer presume that it has satisfied its responsibilities for inspection and to report a complaint owed according to Section 377 HGB with regard to all deviations. Complaints must be received by us within a deadline of 10 days – owing to hidden defects immediately after they are discovered – by enclosing our delivery note. If the buyer fails to make this immediate report then the delivered goods shall be deemed as approved. Insofar as the buyer is not a merchant, he has to submit a report to us in writing in case of obvious defects within 2 weeks after delivery by enclosing the delivery note and with a precise description of the defect. Otherwise the goods shall be deemed as fault-free. Incidentally the statutory regulations shall apply.

IX. Entrepreneur recourse with the sale to commercial resellers

If the buyer resells the sold, newly produced object to a consumer within the scope of his commercial operation and has to take this object back as a result of its faulty condition or the consumer has reduced the purchase price, the setting of a deadline is not required for the assertion of the claims due to defects of the buyer. The buyer can request a claim refund of expenses with the sale of a newly produced object, which he would have to bear in the relationship towards the consumer, if the defect asserted by the consumer had already existed with the transfer of the risk to the buyer. The buyer does not have any claim for damages within the scope of this entrepreneur recourse.

X. Final provisions

If the buyer is a merchant within the meaning of the HGB and does not have a general place of jurisdiction in the domestic country, the place of performance is Minden/Westphalia.

The place of jurisdiction for all disputes arising from the contractual relationship including check, bill of exchange and document proceedings is the court of jurisdiction responsible for the registered seat of the seller.

"Consumer" within the meaning of these provisions pursuant to Section 13 BGB is each natural person, who concludes a legal transaction for a purpose, which can neither be attributed to his/her commercial, nor his/her self-employed professional activity.

"An entrepreneur" within the meaning of these provisions pursuant to Section 14 BGB is a natural person or legal entity or a partnership with legal capacity that upon conclusion of a legal transaction acts while performing their commercial or self-employed professional activity.